

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED

May 10, 2012

In the Matter of S. CASADA, Minor.

No. 306678

Macomb Circuit Court

Family Division

LC No. 2010-000536-NA

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Before: MURPHY, C.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Respondent, G. Casada, appeals as of right the termination of his parental rights to his minor child pursuant to MCL 712A.19b(3)(b)(i) [“parent’s act caused the physical injury or physical or sexual abuse . . . and . . . there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent’s home”] and MCL 712A.19b(3)(n)(i) [parental conviction of criminal sexual conduct and determination “that termination is in the child’s best interests because continuing the parent-child relationship . . . would be harmful to the child”]. We affirm.

As previously stated by this Court:

In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met. “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” We review the trial court’s determination for clear error. [*In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011) (internal citations omitted).]

“A finding is clearly erroneous [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistaken has been made.” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010) (internal citation and quotation marks omitted).

Respondent concedes the existence of a statutory ground for termination of parental rights and, on appeal, challenges only the trial court’s finding that termination of his parental rights was in the best interests of the minor child. MCL 712A.19b(5).

While respondent is correct that there exists a fundamental liberty interest for parents in retaining the custody of their child, *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982), he fails to recognize that there exists a commensurate societal interest in the protection of the welfare of minor children, *Id.* at 790, quoting *Lassiter v Dep't of Social Servs.*, 452 US 18, 27; 101 S Ct 2153; 68 L Ed 2d 640 (1982). Consequently, respondent's right to parent is not absolute and, once clear and convincing evidence has established the existence of a ground for termination of parental rights under MCL 712A.19b(3), the parental liberty interest "no longer includes the right to custody and control of the child[]." *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000) (citation omitted).

Respondent asserts that there exists a rebuttable presumption that the best interests of a child are served by his or her biological parents retaining custody. While respondent correctly recognizes that in a child custody dispute there is "a rebuttable presumption that the best interests of the child are served by giving custody to the natural parent," *Hunter v Hunter*, 484 Mich 247, 266 n 37; 771 NW2d 694 (2009), this same presumption is not applicable in a termination proceeding. Specifically, in accordance with MCL 712A.19b(3), once it has been established that a statutory ground exists for termination of a parent's rights, "the parent's interest in the companionship, care, and custody of the child gives way to the state's interest in the child's protection." *In re Trejo*, 462 Mich at 356. Although MCL 712A.1(3)<sup>1</sup> indicates a preference in favor of biological parents retaining custody of their minor children, such a policy must give way in situations where termination is determined to be necessary, *In re Miller*, 433 Mich 331, 346; 445 NW2d 161 (1989).

In accordance with MCL 712A.19b(5), "If a court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." As noted, respondent concedes the existence of a statutory ground for termination of his parental rights under MCL 712A.19b(3)(n)(i), premised on his having pleaded no contest to second-degree criminal sexual conduct, MCL 750.520c(1)(a), with regard to incidents involving his minor stepdaughter. In challenging the trial court's best interests determination, respondent argues that the testimony of Matthew Rosenberg, LMSW, and Leo Niffeler, LMSW, indicated that it was in the child's best interest to maintain a relationship with respondent and that the potential for maintaining a relationship was not rendered impossible by respondent's incarceration. Respondent further implied that the circumstances of this case did not encompass the urgency of most termination cases as the minor child did not require placement and was not denied permanency as he continued to reside with the biological mother and step-siblings.

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<sup>1</sup> MCL 712A.1(3) provides: "This chapter shall be liberally construed so that each juvenile coming within the court's jurisdiction receives the care, guidance, and control, preferable in his or her own home, conducive to the juvenile's welfare and the best interest of the state. If a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents."

In finding that the child's best interests were served by termination of respondent's parental rights, the trial court focused on respondent's continued insinuation that the victim of his sexual abuse was the aggressor, despite his verbal acknowledgement of responsibility as the adult in the relationship. Specifically, the trial court noted that respondent "continues to state that 'he let it happen' instead of admitting that he was an active participant in improper and illegal behavior." The trial court expressed particular concern over respondent's previous denials while under oath of any improper actions involving the stepdaughter, "when in fact he had acted out the year prior on four known occasions," but his aberrant behavior had not yet been discovered. Acknowledging the opinions of Rosenberg and Niffeler, the trial court "noted that both assessments were made based on Respondent's version of events, and various reports. Neither therapist contacted or interviewed any other party involved." It was also recognized that respondent would require "intensive counseling" to successfully "overcom[e] his sexual deviation" and that, even with the provision of the requisite treatment, there was "no guarantee that he will not offend again." The trial court further emphasized that given the minor child was only two years of age when he last interacted with respondent, and the probability that respondent would serve more than two years for his conviction for criminal sexual conduct and then be precluded while on parole from contact with any children that the potential for maintaining any bond or meaningful contact with the child would be minimal. It further implied that a continued relationship with respondent would potentially disrupt the minor child's undisputed adjustment in the sole custody of his mother and her ability to "maintain this continuity."

As discussed by our Supreme Court, "MCR 2.613(C) requires that in applying the principle that findings of fact may not be set aside unless clearly erroneous, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich at 337. In particular, the Court recognized "the trier of fact has the advantage of being able to consider the demeanor of the witnesses in determining how much weight and credibility to accord their testimony." *Id.* Based on the fact that the opinions of the two experts regarding respondent's possible response to treatment and low risk of recidivism were premised solely on respondent's own reports and interpretation of events and did not include interviews with the victim or the child's mother, the trial court's discounting of the weight and credibility to be afforded to these individuals is to be afforded deference. Further, in making its best interests determination, the trial court specifically evaluated each of the factors as incorporated within the Child Custody Act, MCL 722.23, and Adoption Code, MCL 710.22(g). Respondent does not challenge the trial court's use of these statutory factors on appeal. While not required to use the best interest factors as delineated in the Child Custody Act in a termination proceeding, "it is entirely appropriate for a probate court to consider many of the concerns underlying those best interest factors in deciding whether to terminate parental rights." *In re JS and SM*, 231 Mich App 92, 102; 585 NW2d 326 (1998), overruled on other grounds by *In re Trejo*, 462 Mich at 353-354. It is permissible for trial courts to "refer directly to pertinent best interests factors in the Child Custody Act in making a determination concerning whether a parent has established that termination of parental rights is . . . in a child's best interests." *In re JS and SM*, 231 Mich App at 102-103. In determining it was in the child's best interests to terminate respondent's parental rights, the trial court properly considered evidence on the entire record in making its determination. *In re Trejo*, 462 Mich at 356.

As stated, this Court reviews termination of parental rights cases for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009); MCR 3.977(k). “Clear error signifies a decision that strikes us as more than just maybe or probably wrong,” *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009), and requires that the reviewing court have “a definite and firm conviction that a mistake has been committed,” *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). When viewed in the light of this standard, the evidence proffered in the lower court, and given the deference to be afforded to a trial court’s credibility determinations and the weight attributed to the evidence, we find the trial court’s decision to terminate respondent’s parental rights was not clearly erroneous. See MCR 3.977(K).

Affirmed.

/s/ William B. Murphy  
/s/ Cynthia Diane Stephens  
/s/ Michael J. Riordan